



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.836 and 837 of 2014
and

M.P.(MD)Nos.1 and 2 of 2014

W.A.(MD)No.836 of 2014:-

1.State of Tamil Nadu represented by its
the Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai.

2.The Director of Rural Development,
Rural Development Directorate,
4th Floor, Panagal Building, Chennai – 600 015.

3.The District Collector,
Theni District, Theni.

4.The Commissioner,
Panchayat Union, Theni, Theni District.

... Appellants

Vs.

K.Rajasekaran

... Respondent



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PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.02.2014 passed by this Court in W.P(MD)No. 7476 of 2010.

W.A.(MD)No.837 of 2014:-

1.State of Tamil Nadu represented by its
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Rural Development and Panchayat Raj Department,
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4th Floor, Panagal Building, Chennai – 600 015.

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... Appellants

Vs.

K.Rajasekaran

... Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.02.2014 passed by this Court in W.P(MD)No. 8636 of 2010.

For Appellant :Mr.S.Shaji Bino
Special Government Pleader
For Respondents :Mr.K.Vadivel

(in both cases)



COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

These Writ Appeals are filed at the instance of the State. The Writ Petitioner was appointed as Masalchi on daily wages in the Theni Panchayat Union on 10.04.1995. He aspired for the post of Night Watchman and sought a Mandamus in W.P(MD)No.7476 of 2008 for a direction to the official respondents to regularise his service as Masalchi with effect from 10.04.1997 in time scale of pay and appoint him as a Night Watchman or Office Assistant in the Panchayat Union with all attendant benefits.

2.The Writ Petitions came to be disposed on 10.02.2014 in the petitioner's favour. In allowing the Writ Petitions, the learned Single Judge took note of G.O.Ms.No.22 dated 28.02.2006, and the fact that the petitioner has completed 10 years of service, which was a condition stipulated under the Government Order for regularisation. Hence, by virtue of the benefit available under that Government Order, a direction was issued to the respondents to regularise his service and absorb him as a Night Watchman or Office Assistant in any existing vacancy.



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3.Thus, in effect, the order of the learned Single Judge extends two benefits to the Writ Petitioner, (i) regularisation of his service and (ii) conversion and absorption into the sanctioned post of Night Watchman or Office Assistant.

4.This order is assailed by the State, which relies primarily on the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka and others vs Uma Devi (3) and others* [(2006) 4 SCC 1], followed subsequently in several decisions by this Court including in *Secretary to Government School Education Department, Chennai vs Thiru.R.Govindasamy and others* [Civil Appeal Nos.2726-2729 of 2014].

5.They also draw attention to the fact that the premise of G.O.Ms.No.22, dated 28.02.2006 was to render a benefit by way of a one-time measure by regularising the appointment of persons in accordance with service conditions prescribed for the post concerned. Thus, read along with the judgment in Uma Devi's case, particularly, paragraph 53 thereof, it is only in cases where, the persons were duly



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qualified and were employed in duly sanctioned posts, that such benefit (of regularisation) may be considered.

6. That apart, in cases of persons desirous of said benefit, the process of seeking such regularisation must be set in motion by them within six months from the date of that judgment, ie., 10.04.2006. In the present case, they point out that the present Writ Petitions had been instituted only in 2008 and 2010 respectively, which would fall outside the time line stipulated by the Apex Court.

7. The State also draws attention to the position that the post of Masalchi is not one sanctioned and hence, the benefit granted by the learned Single Judge fell far outside what is available under the applicable Rules and Regulations.

8. More over, the learned Judge has permitted conversion from a daily wage post into the sanctioned post of Night Watchman, thus depriving other eligible aspirants to those posts. To clarify, the proper approach for recruitment to a sanctioned post would be by way of a



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notification calling for applications, which process has not been carried out in this case.

9.To this, the learned Counsel for the respondent/Writ Petitioner would submit that, on the contrary, there is a resolution of Theni Panchayat Union and recommendation from the Panchayat Union Head to the District Collector recommending the Writ Petitioner for the post. We are of the considered view that such resolution and recommendation cannot, by themselves, confer any benefit on the Writ Petitioner, and any appointment would have to be seen in the context of, and be compliant with applicable Rules and Regulations to be valid.

10.Post issuance of G.O.(Ms)No.22 dated 28.02.2006, one assumes that there must have been a slew of applications received by the State seeking regularisation, as a result of which, G.O.Ms.No.74, dated 27.06.2023 came to be issued with retrospective effect from 01.01.2006, such date being even prior to G.O.Ms.No.22, tightening and restricting the benefit granting under the same.



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11. In G.O.Ms.74, dated 27.06.2013, it is made clear that the benefit contemplated would be only in respect of full time, daily wage employees, who were initially appointed on full time basis in consultation with the employment exchange to discharge the functions of a post under the Tamil Nadu Basic Service and Rules contemplated 10 years of service as on 01.01.2006.

12. Thus, the applicable parameters are that (i) the applicant would have to be a full-time employee (ii) the initial appointment should have been on full-time wage basis in consultation with the employment exchange (iii) the applicant should have been discharging functions in a sanctioned post (iv) there has been completion of ten years of service as on 01.01.2006. Clause (vi) of para 6 of G.O.Ms.No.74, makes it clear that the benefit shall not be granted to part-time and casual employees.

13. These requirements find mention in para 53 of the judgment in Uma Devi's case as well, where, as a pre-condition, the qualifications of the employee as well as the fact that they must have rendered service in sanctioned vacancy post, find mention. With this, the door to any



benefit sought by the Writ Petitioner, stands permanently shut.

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14.The conclusion, as above, also finds support from the judgment of the Hon'ble Supreme Court in the case of *Secretary to Government School Education Department, Chennai vs Thiru.R.Govindasamy and others* [Civil Appeal Nos.2726-2729 of 2014], and the cases cited therein, rendered in the context of part time employees. Para 37 of the said judgment reads as follows:

“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment



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cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.” (Emphasis added)

15. In the light of the above discussion, these Writ Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.] & [R.V.J.]
05.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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